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## MEMORANDUM

SE #02-04

To: Directors of Special Education  
From: Robert Marra, Associate Superintendent  
Date: July 11, 2002  
Re: Use of due process procedures

Pursuant to a directive from the U.S. Department of Education, Office of Special Education Programs (OSEP) dated June 20, 2002, the Division is required to notify all public agencies of OSEP's interpretation of 34 CFR §300.505 regarding the use of due process procedures to override the parental consent requirement. 34 CFR §300.505 requires parental consent before the school initiates an initial educational evaluation or reevaluation, as well as prior to the initial provision of special education and related services. The federal regulation permits the use of due process procedures to override the parental consent requirement for evaluation, but the regulation does not include a similar provision to override the parental consent requirement for the initiation of special education and related services. The lack of this provision has been interpreted by OSEP to prohibit a school from utilizing due process procedures to override the parental consent requirement for the initiation of special education services.

511 IAC 7-25-1 is based, in part, on 34 CFR 300.505, and states that no student shall be denied a free appropriate public education as the result of the school's inability to obtain parental consent for evaluations or special education services. It further requires the school to utilize due process procedures when a parent declines to give consent for the school to conduct an initial educational evaluation. The rule does not specifically address the use of due process procedures to override the parental consent requirement for the initiation of special education services. In order to remain in concert with OSEP's interpretation, this memo is to formally advise public agencies that due process procedures cannot be used to override the parental consent requirement for the initiation of special education services. Due process procedures remain available to resolve the parental consent issue for initial evaluations, additional evaluations, reevaluations, and change of placement.

Per OSEP, a parent's decision on whether to allow the school to initiate special education and related services is solely within the parent's province. In the absence of parental consent to initiate special education services, however, the school should make every effort to meet the student's needs in the general education environment.

Should you have any questions, please feel free to contact me at the number or e-mail address listed above.